

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

LOIS M. HALL-KIMBROUGH,

Plaintiff,

vs.

CORNELL KIMBROUGH,

Defendants.

Case No: C 10-3935 SBA

**ORDER GRANTING PLAINTIFF'S
APPLICATION TO PROCEED IN
FORMA PAUPERIS AND
DISMISSING ACTION**

Plaintiff has filed a complaint seeking enforcement of a divorce decree issued by the Michigan State Circuit Court, Wayne County. Presently before the Court is Plaintiff's application to proceed in forma pauperis.

The in forma pauperis statute, 28 U.S.C. § 1915, permits the commencement of a civil action "without prepayment of fees and costs or security therefor, by a person who makes affidavit that he is unable to pay such costs or give security therefor." 28 U.S.C. § 1915(a). Under 28 U.S.C. § 1915(e)(2), federal courts are authorized to review claims filed in forma pauperis prior to service and to dismiss the case at any time if the court determines, inter alia, that the allegation of poverty is untrue. The benefit of proceeding in forma pauperis is a privilege, not a right. Franklin v. Murphy, 745 F.2d 1221, 1231 (9th Cir. 1984). Thus, to obtain this privilege, the litigant must demonstrate, to the Court's satisfaction, his or her inability pay the requisite fees and costs. See Williams v. Marshall, 795 F. Supp. 978, 979 (N.D. Cal. 1992).

In the present matter, Plaintiff states that she is currently receiving monthly income of \$1,912.28 from California PERS Disability Retirement and Social Security, as well as \$720 per month in the form of Section 8 Housing Assistance. Plaintiff claims monthly expenses of

1 \$1,851.20, which leaves Plaintiff with a monthly excess of only \$61.08. Based on the papers
2 submitted, the Court, in its discretion, finds that Plaintiff should be conferred in forma pauperis
3 status.

4 However, under 28 U.S.C. § 1915(e)(2), federal courts are authorized to review claims
5 filed in forma pauperis prior to service, and to dismiss the case at any time if the court
6 determines that: (1) the allegation of poverty is untrue; (2) the action is frivolous or malicious;
7 (3) the action fails to state a claim; or (4) the action seeks monetary relief from a defendant
8 who is immune from such relief.

9 In this case, Plaintiff's complaint, which seeks enforcement of a Michigan state divorce
10 decree, fails to allege facts giving rise to federal jurisdiction. Specifically, there exists a
11 "domestic relations exception" that "divests the federal courts of power to issue divorce,
12 alimony, and child custody decrees." Ankenbrandt v. Richards, 504 U.S. 689, 703 (1992).
13 This exception extends to "issues arising out of a conflict over a divorce decree" Valley
14 Force Life Ins. Co. v. Hulse, 2007 WL 2012740, *3 (N.D. Cal 2007) (citing McLaughlin v.
15 Cotner, 193 F.3d 410, 414 (6th Cir. 1999)). Accordingly,

16 IT IS HEREBY ORDERED THAT:

- 17 1. Plaintiff's application to proceed in forma pauperis is GRANTED.
18 2. This action is DISMISSED. The Clerk shall close this file and terminate all
19 pending matters.

20 IT IS SO ORDERED.

21 Dated: October 1, 2010

22 
23 SAUNDRA BROWN ARMSTRONG
24 United States District Judge
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1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 HALL-KIMBROUGH et al,

5 Plaintiff,

6 v.

7 KIMBROUGH et al,

8 Defendant.
_____ /

9 Case Number: CV10-03935 SBA

10 **CERTIFICATE OF SERVICE**

11
12 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
13 Court, Northern District of California.

14 That on October 4, 2010, I SERVED a true and correct copy(ies) of the attached, by placing said
15 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing
16 said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle
17 located in the Clerk's office.

18 Lois M. Hall-Kimbrough
19 55-A Massolo Drive, Apt. A
20 Pleasant Hill, CA 94523

21 Dated: October 4, 2010

22 Richard W. Wieking, Clerk

23 By: LISA R CLARK, Deputy Clerk
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